

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6735 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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KAMLABEN KHODIDAS DESAI

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR (ULC), RAJKOT & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/02/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 11th June 1986 under sec. 21(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on

26th April 1988 in Appeal No. Rajkot-121 of 1986 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 cancelled the permission under sec. 21(1) of the Act granted to the petitioner by the order passed on 30th September 1980 and communicated on 4th December 1980.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round certain parcels of land bearing Plots Nos. 13, 14, 29, 32, 64 and 65 from Survey No. 156 in all admeasuring 2136.77 square meters situated in village Raiya within the urban agglomeration of Rajkot (the disputed lands for convenience). The petitioner applied for permission in the prescribed form under sec. 21(1) of the Act with respect to the disputed lands. By the order passed by respondent No. 1 on 30th September 1980 and communicated on 4th December 1980, the necessary permission under sec. 21(1) of the Act came to be granted on certain terms and conditions. Its copy together with the accompanying schedules is at Annexure A to this petition. One of the conditions included completion of the construction work within 5 years from the date of the order of communication. Yet another condition required the petitioner to start the construction work within one year from the communication of the order at Annexure A to this petition under intimation to respondent No.1. It appears that the petitioner could not start any construction activity in the disputed lands within one year from the date of the communication of the order at Annexure A to this petition. Thereupon a show-cause notice came to be issued on 15th December 1981 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be cancelled. After hearing the petitioner, respondent No.1, by his order passed on 20th October 1982, cancelled the order at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. That appeal came to be accepted by the order passed on 7th November 1984 and remanded the matter to respondent No.1 with respect to grant of extension of time for completion of the scheme. Since the construction work was not completed by the petitioner within 5 years from the date of communication of the order at Annexure A to this petition, respondent No.1 issued one show-cause notice on 23rd December 1985 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be cancelled. After hearing the petitioner, by the order passed on 11th June 1986 under sec. 21(2) of the Act, respondent No.1 cancelled the order at Annexure A to this petition. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-121 of 1986. By the order passed on 26th April 1988 in the aforesaid appeal,

respondent No.2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. It is obvious that the petitioner could not proceed with the construction activity from the date of the show-cause notice issued on 15th December 1981 under sec. 21(2) of the Act till it was set aside by the appellate order passed on 7th November 1984. The delay of 3 years in non-completion of the scheme could therefore be not on unjustifiable grounds. In this connection a reference deserves to be made to the ruling of this Court in the case of Givndlal Chunilal Dalvadi v. State of Gujarat and others reported in 1994(1) Gujarat Current Decisions 526. It has been held therein that the delay in completion of the scheme if found on justifiable grounds can be condoned by imposing some reasonable penalty. That raises the question as to what penalty should be imposed on the petitioner. Since the delay has been caused largely on account of the fault of the petitioner though not on absolutely unjustifiable grounds, it would be in the interest of justice to impose penalty at the rate of Rs. 2000/- per unit. It transpires from the order at Annexure A to this petition that the scheme envisaged construction of 18 residential units for weaker sections of the society. In that view of the matter, the penalty amount for condonation of the delay would be to the tune of Rs. 36000/-. The petitioner deserves to be directed to complete the scheme within 3 years from the date of this judgment.

4. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (Respondent No.1 herein) on 11th June 1986 under sec. 21(2) of the Act at Annexure B to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 26th April 1988 in Appeal No. Rajkot-121 of 1986 at Annexure C to this petition is quashed and set aside on condition of payment by the petitioner within one month from today the penalty of Rs. 36000/- by means of an account payee cheque drawn in favour of respondent No.1 and on condition that the scheme shall be completed in all respects within 3 years from today. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

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